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18 UNITED STATES DISTRICT COURT

19 CENTRAL DISTRICT OF CALIFORNIA

20 CHARMAINE CHUA, ET AL.

21 PLAINTIFFS,

22 VS.

23 CITY OF LOS ANGELES, ET AL.,

24 DEFENDANTS.

25 CASE NO: 2:16-cv-00237-JAK-GJS(x)
26 [HON. JOHN A. KRONSTADT]

27 NOTICE OF MOTION AND MOTION
28 FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; [PROPOSED]
ORDER; DECLARATIONS

29 HEARING DATE: MARCH 16, 2020
30 HEARING TIME: 8:30 A.M.
31 COURTROOM: 10B

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1 PLEASE TAKE NOTICE that, on March 16, 2020, at 8:30 a.m., or as soon
2 thereafter as this matter may be heard in Courtroom 10B of the United States
3 District Court for the Central District of California, 350 West First Street, Los
4 Angeles, California 90012, Plaintiffs will, and hereby do, move the Court to finally
5 approve the proposed settlement in this case, and to authorize the mailing and other
6 forms of notice to class members.

7 This motion is unopposed and is based on the accompanying Memorandum
8 of Law, the stipulation of all parties to entry of the proposed Preliminary Approval
9 Order, the proposed Preliminary Approval Order and exhibits thereto filed
10 previously in the case, the declarations of counsel previously and concurrently
11 filed in this case, the records in this case, and on such further evidence as may be
12 presented at a hearing on the motion.

13 DATED: February 13, 2020

14 Respectfully submitted,
15 Kaye, McLane, Bednarski & Litt, LLP

16 By: /s/ Barrett S. Litt
17 Barrett S. Litt
18 Attorneys for Plaintiffs

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8	563 F.3d 948(9th Cir. 2009).....	6
9	<i>In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions</i>	
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MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

This action arises out of the actions by Defendants surrounding a protest on November 26, 2014, in or around the vicinity of 6th and Hope Street in Los Angeles over the decision not to file criminal charges for the killing of Michael Brown in Ferguson, Mo. Plaintiffs allege that Defendants unlawfully declared an unlawful assembly, unlawfully and unjustifiably arrested Plaintiffs and unlawfully denied Plaintiffs release from custody on their own recognizance (“OR”) regarding the attendant arrest, detention and release of Plaintiffs.

The Court entered its final class certification order certifying a damages class for the Sixth and Hope protestors on May 25, 2018. (Dkt. 50.) It denied without prejudice certification for an injunctive relief class, and did not certify a class for the Beverly and Alvarado detention leaving one individual Plaintiff, Kyle Todd, for that claim. *Id.*

The parties held three in-person mediation conferences before Magistrate Judge Jay Gandhi, two while he was still on the bench and one after, which did not result in a settlement. After Plaintiffs filed their motion for general damages and expert reports were exchanged, the parties had a one-on-one negotiation, which resulted in the instant proposed settlement subject to the approval of the Court. Preliminary Approval Declaration of Barrett S. Litt (hereafter “Litt Prelim. App. Dec.”), ¶ 4. The proposed settlement has been agreed to by all parties, including approval by the Los Angeles City Council. To minimize the class administration costs, Plaintiffs decided it would be more efficient for the class administration to be handled by the Law Office of Carol Sobel for a maximum fee of \$20,000, which would be substantially less expensive than hiring a professional administrator, and the Court so appointed Ms. Sobel’s office.

The class was composed of 127 people, two of whom filed their own lawsuits and reached settlements with the City of Los Angeles. Address

1 information could only be found for 112 people, all of whom were sent class
2 notices and claim forms. Thus, 112 claim forms were sent to class members by Ms.
3 Sobel's office. There were no objections and no opt outs. 85 claim forms were
4 filed with Ms. Sobel's office, and there were no late claims, which means that 75%
5 of the 112 class members for whom Plaintiffs had contact information filed claims.
6 Ms. Sobel's office was both efficient and extremely reasonably priced, as she
7 charged only \$40 per hour for staff time. See Declarations of Weston Rowland and
8 Carol Sobel, ¶¶ 1-9, both filed contemporaneously with this motion. Costs of
9 mailing, printing, web search and web domain to date totaled \$155.74. Sobel Dec.,
10 ¶¶ 10. Ms. Sobel anticipates further expenditures to complete the class
11 administration of \$73.75 in costs and \$280 in Mr. Rowland's time. *Id.*, ¶¶ 9, 11.
12 Thus, the total to be paid to her office for past and future class administration is
13 \$4,121.49. *Id.*, ¶¶ 12.

14 **II. TERMS OF THE SETTLEMENT AND FINAL ALLOCATION OF
15 FUNDS**

16 The terms of the settlement are set forth in greater detail in the exhibits
17 attached to the Proposed Preliminary Approval Order (specifically in the
18 Settlement Agreement), which exhibits are as follows:

19 Exhibit A Settlement Agreement

20 Exhibit B Proposed Class Notice

21 Exhibit C Claim Form

22 The class settlement's basic terms are as follows:

23 a. A class fund of \$255,010 to be paid as follows:

24 i. expert costs (totaling \$20,210) to be paid to the Client Trust
25 Account of the Law Office of Carol Sobel;

26 ii. mediation costs (totaling \$5500) to be paid to the Client Trust
27 Account of the Law Office of Carol Sobel;

- iii. incentive awards to the three class representatives of \$5000 each to be paid to the Client Trust Account of the Law Office of Carol Sobel (for a total of \$15,000);
- iv. class administration costs of a flat fee of \$20,000 to be paid to the Law Office of Carol Sobel, inclusive of all cost of mailing and reporting; and
- v. \$200,000 for distribution pro rata to claiming class members to be paid to the Client Trust Account of the Law Office of Carol Sobel.

22 c. \$5000 to Todd Kyle as compensation for his individual claim paid to
23 the Client Trust Account of the Law Office of Carol Sobel.

24 Because up to \$20,000 was allocated to class administration, there is an
25 additional \$15,878.51 to supplement the class fund payable to class members. The
26 following chart shows how the funds would be disbursed under the settlement
27 agreement in light of this final accounting.

1	DESCRIPTION	AMOUNT
2	KYLE TODD RECOVERY	\$5000
3	COSTS (MEDIATION/EXPERT) FROM CLASS FUND	\$25,710
4	TOTAL CLASS ADMINISTRATIVE COSTS	\$4,121.49
5	INCENTIVE PAYMENTS	\$15,000
6	CLASS FUND FOR DISTRIBUTION TO CLASS MEMBERS (INCLUDING UNUSED CLASS ADMIN FUNDS OF \$5000 FROM THE \$20,000 ALLOCATED)	\$215,878.51
7	FEES AND COSTS (COSTS IN ADDITION TO MEDIATION EXPERT COSTS PAID BY CLASS FUND)	\$484,290
8	TOTAL	\$750,000.00
9		
10	TOTAL # CLAIMS FILED	85
11	AMOUNT PER CLASS MEMBER (AFTER ALL COSTS AND INCENTIVE FEES)	\$2539.74

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13 **III. THE STANDARDS FOR FINAL APPROVAL OF THE SETTLEMENT
HAVE BEEN MET**

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15 The factors for entry of a final approval order have been summarized in
 16 *Newberg on Class Actions* §13:48 (5th ed.) as generally assessing 1) the amount of
 17 the settlement in light of the potential recovery discounted by the likelihood of
 18 plaintiffs prevailing at trial; 2) the extent to which the parties have engaged in
 19 sufficient discovery to evaluate the merits of the case; 3) the complexity and
 20 potential costs of trial; 4) the number and content of objections; 5) the
 21 recommendations of experienced counsel that settlement is appropriate; and, in
 22 some instances; and 6) the capacity for the defendant to withstand a larger
 23 judgment. We briefly address those factors here:

24 **A. THE AMOUNT OF THE SETTLEMENT IN LIGHT OF THE POTENTIAL
RECOVERY**

25 Plaintiffs addressed this issue in the Preliminary Approval Order
 26 submissions, and provided evidence that the recovery was in line with those in
 27 other cases. The recovery for class members is substantial, especially when viewed
 28 from the perspective of the trial risks. The realized recovery per claiming class

1 member exceeds \$2500. While this is slightly lower than amounts in some
2 comparable cases, this case carried greater risk. Defendants claimed that the
3 unlawful assembly order was justified and audible, and claimed that they did not
4 deny OR release, but rather needed the extended time to process the arrestees
5 before releasing them. While Plaintiffs believed they had a strong claim, they
6 considered this claim to be considerably more subject to dispute than other cases
7 they handled. Plaintiffs' counsel concluded that a recovery of between \$1500-
8 \$2000 per claiming class member was a fair settlement given the disputed nature of
9 the claim and that all class members were released within 18 hours in contrast to
10 longer detentions in other cases. Litt Prelim. App. Dec. ¶ 9. As indicated, the actual
11 recovery well exceeds that amount.

12 **B. The Extent Of The Discovery Conducted**

13 This case was litigated extensively and vigorously. Plaintiffs conducted
14 extensive discovery, both documents and numerous depositions. They also
15 gathered substantial third-party evidence. They retained experts regarding the
16 propriety of the police actions, reenactment of the audibility of the police unlawful
17 assembly announcement and general damages. Litt Prelim. App. Dec., ¶ 5.

18 **C. The Complexity And Potential Costs Of Trial**

19 Plaintiffs assume that the trial in this case would have lasted two to three
20 weeks, and would have been hotly contested. While Plaintiffs believed they would
21 prevail, they recognized (as explained in sub-section A, *supra*) that the Defendants
22 claimed that the unlawful assembly order was justified and audible, and claimed
23 that they did not deny OR release but rather needed the time to process the
24 arrestees before releasing them. The trial would have been of moderate complexity.
25 Most importantly, it is unclear that the results would have been materially better
26 than the settlement; it is conceivable they would have been less favorable. It could
27 have dragged out over a lengthy period, and a favorable verdict could have been
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1 appealed. The statutory fees would have been run up, complicating a future
2 settlement. Thus, it was in Plaintiffs' interests to conclude the case with certainty.

3 **D. The Number And Content Of Objections and Opt-Outs.**

4 There were no objections or opt-outs, and there was a high claims rate. The
5 lack of any objections and opt-outs strongly support the fairness and adequacy of
6 the settlement. "The negligible number of opt-outs and objections indicates that the
7 class generally approves of the settlement." *In re Toys R Us-Delaware, Inc.--Fair*
8 *& Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 456 (C.D.
9 Cal. 2014) (citing *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 577
10 (9th Cir. 2004)(affirming the approval of a class action settlement where 90,000
11 members received notice and 45 objections were received); *Rodriguez v. West*
12 *Publishing*, 563 F.3d 948, 967(9th Cir. 2009) ("The court had discretion to find a
13 favorable reaction to the settlement among class members given that, of 376,301
14 putative class members to whom notice of the settlement had been sent, 52,000
15 submitted claims forms and only fifty-four [.014 percent] submitted objections");
16 *Chun-Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848, 852 (N.D.Cal.2010)
17 (concluding, in a case where "[a] total of zero objections and sixteen opt-outs
18 (comprising 4.86% of the class) were made from the class of roughly three
19 hundred and twenty-nine (329) members," that the reaction of the class "strongly
20 supports settlement").

21 **E. The Capacity For The Defendant To Withstand A Larger
22 Judgment.**

23 This was not a factor in this settlement. The Defendants here could
24 unquestionably withstand a larger judgment. The settlement was driven by an
25 assessment of the reasonable value of the case, and was not discounted due to
26 questions regarding the Defendants' ability to pay.

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IV. INCENTIVE AWARDS FOR THE NAMED PLAINTIFFS ARE APPROPRIATE.

This issue was briefed in the Motion for a Preliminary Approval Motion, (Dkt. 131- 13, 14), and will not be repeated here. The settlement provides \$5000 incentive awards to each of the three Named Plaintiffs, in addition to the recovery to which they are otherwise entitled. The proposed Final Approval Order contains a paragraph addressing this issue and citing cases to support the conclusion that the award is appropriate.

V. ATTORNEYS' FEES

Plaintiffs' counsel previously filed an extensive fee motion and evidentiary support explaining the reasonableness of the rates used and hours expended in this case, and that their fee is a substantial discount from what they would have sought in a normal, contested fee motion. Significantly, even though the class notice fully apprised class members of the proposed fee, and that it exceeded the class fund, no class member objected to the size of the fee or the fact that the fees exceeded the amount allocated to class members.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs ask that the Court enter the proposed Final Approval Order with any revisions consistent with the material provisions of the Settlement Agreement that the Court deems necessary or appropriate.

DATED: February 13, 2020

Respectfully submitted,
KAYE, McLANE, BEDNARSKI & LITT, LLP
LAW OFFICES OF CAROL SOBEL
SCHOENBRON, DESIMONE, ET AL.

By: /s/ Barrett S. Litt

Barrett S. Litt

Attorneys for Plaintiffs

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